

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 27.80
Title 14, California Code of Regulations
Re: Ocean Salmon Sport Fishing

- I. Date of Initial Statement of Reasons: December 20, 2007
- II. Date of Amended Initial Statement of Reasons: March 19, 2008
- III. Date of Final Statement of Reasons: April 28, 2008
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 8, 2008
Location: San Diego, CA
 - (b) Discussion Hearing: Date: March 7, 2008
Location: Stockton, CA
 - (c) Discussion Hearing: Date: April 11, 2008
Location: Bodega Bay, CA
 - (d) Adoption Hearing: Date: April 15, 2008
Location: Teleconference

V. Update:

The Pacific Fishery Management Council (PFMC) adopted Option III from the Amended Initial Statement of Reasons to amend Section 27.80, Title 14, California Code of Regulations on April 10, 2008.

The Fish and Game Commission adopted Option III for the state regulations at its April 15, 2008 meeting.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

(1) Dick Pool, e-mail dated January 30, 2008:

- a. Forwarded a copy of January 28, 2008 letter to PFMC members from PFMC's executive director.

Response:

- a. The regulations are based upon the PFMC final recommendation and the information contained in the letter.

(2) EB Duggan, KMZ Fisheries Alliance, oral comments at Commission meeting on March 7, 2008:

- a. He requested to keep open all possible choices, so the KMZ Fisheries Alliance would be able to support one of the options once all the facts are available.

Response:

- a. Comment noted.

(3) Tracy Bennetti, e-mail dated March 13, 2008:

- a. He wants their lifetime fishing license refunded since him and his wife can't fish for salmon this year.

Response:

- a. This comment does not address ocean salmon fishery regulations and cannot therefore be addressed in this particular regulatory procedure.

(4) Michael Ebert, e-mail dated March 13, 2008:

- a. He requests a partial salmon season of one day per week instead of a complete closure.

Response:

- a. Comment noted. PFMC adopted Option III.

(5) Bob Johnson, e-mail dated March 13, 2008:

- a. He does not support closure of salmon fishing.
- b. He feels the problem is the lack of enforcement of the Endangered Species Act and excessive water exports from the Delta for agriculture and Southern California cities.

Response:

- a. See Response 4a.
- b. See Response 3a.

(6) Art Narverud, e-mail dated March 13, 2008:

- a. He wants us to fix the real problem with the low salmon numbers before closing the salmon fisheries.
- b. The decisions are being made on erroneous forecasts.

- c. We must change the way that the fisheries are managed.

Response:

- a. See Response 2a.
- b. See Response 2a.
- c. See Response 2a.

(7) Shawn Malakiman, e-mail dated March 13, 2008:

- a. He does not support closing the salmon fisheries.
- b. He asks for one fish per person, two fish per boat or a catch and release season.

Response:

- a. See Response 4a.
- b. See Response 4a.

(8) Jackie Daniels, e-mail dated March 13, 2008:

- a. She wants to stop pumping water to Southern California and we find the problem with the salmon decline.

Response:

- a. See Response 3a.

(9) Dan Martin, Fern River Resort, e-mail dated March 15, 2008:

- a. He requests closure of the salmon spawning grounds on the Fern River.
- b. The PPMC analysis that the low 2007 Chinook jack return lacks merit.
- c. The removal of the summer dams on the Fern and San Lorenzo rivers caused the loss of thousands of salmon fry due to excessive predation due to low water levels.
- d. We need a large hatchery program with a hatchery on every river to restore our rivers with a low or lost population of salmon with hatchery fish.
- e. Sell a salmon punch card to help finance the hatcheries. First 25 fish punch card for \$25.00, and the second card for 25 more fish at \$100. Third punch card for 25 more fish at \$200.
- f. We need to manage our dams and water diversions so they do not block wild salmon from returning to their spawning grounds. This includes allowing enough water flow past and the spillways need to be the fish ladders.
- g. Stop the bait seining in front of Moss Landing.
- h. We need to remove the seals and sea lions from the rivers.
- i. We cannot close sport salmon fishing based on jack salmon returns.

This is a huge industry. It will cost our state billions and my resort thousands in tourist dollars for April alone.

- j. The local businesses in the harbor have stated without a salmon season they are going out of business forever.
- k. Do not implement a salmon punch card to support hatcheries and then close hatcheries.
- l. He wants to truck salmon around a disease-infested section as we saw on the Klamath River in 2006.

Response:

- a. See Response 3a.
- b. See Response 2a.
- c. See Response 3a.
- d. See Response 3a.
- e. See Response 2a.
- f. See Response 3a.
- g. See Response 3a.
- h. See Response 3a.
- i. See Response 2a.
- j. See Response 2a.
- k. See Response 3a.
- l. See Response 3a.

(10) Roger Barnhart, e-mail dated March 20, 2008:

- a. He does not support the PFMC Option III as it will concentrate all of the fishing effort during the holiday period.
- b. He requests a 10 to 20 salmon punch card be used instead of closing the salmon season.

Response:

- a. See Response 2a. PFMC Option I, not Option III would have allowed fishing around the holidays. PFMC chose Option III.
- b. See Response 4a.

(11) Gary York, e-mail dated March 24, 2008:

- a. He does not support the closure of salmon fishing because salmon fisherman can give the Coast Guard free early warning on oil spills.

Response:

- a. See Response 4a.

(12) Bob Morra, e-mail dated March 25, 2008:

- a. He does not support a closure of salmon fishing as he has spent lots of

- money on his fishing vessel and gear.
- b. He asks for a decision based the effect on fisherman along with the effects on salmon abundance.

Response:

- a. See Response 4a.
- b. See Response 2a.

(13) Debbie LeBlanc, two e-mails dated March 25 and March 26, 2008:

- a. She does not support a closure of salmon fishing.

Response:

- a. See Response 4a.

(14) Bob Hather, e-mail dated March 27, 2008:

- a. He does not support a closure of salmon fishing based only upon river counts only. He asks to open salmon season for a few weeks and then analysis the catch information before closing the salmon season.

Response:

- a. See Response 4a.

(15) Bill Shelton, e-mail dated March 29, 2008:

- a. He shot a promotional video on his new salmon fishing lure and he feels his video shows that the salmon and krill are very abundant and not in trouble this year.

Response:

- a. The video shows one to three salmon and is not conclusive on the subject of salmon and krill abundance.

(16) Barbers Country Farm, e-mail dated April 10, 2008:

- a. He does not want the ocean fishery closed without closing the river fishery.
- b. How was the \$100 million provided for salmon a few years ago spent?

Response:

- a. See Response 3a and 4a.
- b. See Response 3a.

(17) Don Harrold, oral comments at Commission teleconference on April 15, 2008:

- a. He supports present closures to protect Sacramento River Fall Chinook.
- b. He requests that no catch and release fishing be allowed on inland salmon.

Response:

- a. See Response 2a.
- b. See Response 3a.

(18) Paul Weakland, oral comments at Commission teleconference on April 15, 2008:

- a. He wants PFMC modeling and methodologies verified.
- b. The historical record shows that low escapements lead to high returns the next year.
- c. The Central Valley hatcheries are being litigated.
- d. He expressed that the recent collapse of the herring fishery is related to the Sacramento River fall Chinook collapse.

Response:

- a. See Response 2a.
- b. See Response 2a.
- c. See Response 3a.
- d. See Response 3a.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The PFMC examined various alternatives in the process of adopting the management options on March 14, 2008 for public review. These

included such alternatives as:

1. the minimum size of salmon that may be retained;
2. the number of rods anglers may use (e.g., one, two, or unlimited);
3. the type of bait and/or terminal gear that may be used (e.g., amount of weight, hook type, and type of bait or no bait);
4. the number of salmon that may be retained per angler-day or period of days;
5. the definition of catch limits to allow for combined boat limits versus individual angler limits;
6. the allowable fishing dates and areas; and
7. the overall number of salmon that may be harvested, by species and area.

(b) No Change Alternative:

Upon approval of the PFMC's recommendations by the NMFS, the State must move in a timely manner to conform its ocean sport fishing regulations for salmon in State waters (zero to three miles offshore) to the Federal regulations in order for the new state and federal regulations to become effective at the same time. Otherwise, preemption of State regulatory authority by the NMFS could occur if State regulations are in conflict with Federal regulations.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

(d) Alternatives That Would Lessen the Adverse Economic Impact on Small Businesses:

No alternatives were identified or brought forward that would lessen the impact on small businesses.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result

from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Under a normal season ocean salmon anglers contribute about \$110,400,000 in direct revenues to the State's business sector. This is based on a 2006 US Fish and Wildlife national survey of fishing, hunting, and wildlife associated recreation for California. Adding the indirect and induced effects of this initial revenue contribution and the total benefit to California's economy is normally about \$167,000,000. This is equivalent to about \$63,000,000 in total wage earnings to Californians, or about 1,400 jobs in the state.

The adopted Option III regulations result in a 94.3 percent reduction in the available angling days for ocean salmon under a normal season. Using national data on recreational angler expenditures on goods and services, the direct loss to the business community is estimated to be about \$104,100,000. Because of the indirect and induced effects of this loss, California's total economic output is estimated to be reduced \$157,400,000. Adverse impacts to total wage earnings and California jobs would be about \$59,100,000 and 1,319, respectively.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The adopted Option III regulations result in a 94.3 percent reduction in the available angling days for ocean salmon under a normal season. On a pro-rata basis, reducing the estimated business output for the State by this same percentage could result in a reduction of 1,319 jobs.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new reporting requirements imposed as a result of the proposed regulations.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding

to the State:

There are no new reporting requirements to State agencies as a result of the proposed regulations. However, reduced recreational fishing opportunities would likely result in revenue impacts to the State, estimated to be up to **\$2,118,313**. This is due to reduced demand for recreational fishing licenses, permits, and or stamps, normally purchased from the State and increased enforcement for the 2008 ocean salmon season.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

Informative Digest (Policy Statement Overview)

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean salmon fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan (FMP). These recommendations coordinate west coast management of sport and commercial ocean salmon fisheries in the Federal fishery management zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service (NMFS).

California's sport fishing regulations will need to conform to the new Federal regulations to achieve optimum yield in California. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport fishery in State waters (zero to three miles offshore) which are consistent with Federal fishery management goals and are effective at the same time.

The text in bold below replaces the text from **amended** Initial Statement of Reasons (ISOR) and Informative Digest and provides a summary of a PFMC inseason action and the three options developed for public review at the PFMC meeting in Sacramento on March 9-14, 2008.

The PFMC has determined that Sacramento River Fall Chinook (SRFC) merits further protection **as this stock is** projected to be at a record low **ocean** abundance level in 2008. The PFMC Salmon Technical Team (STT) updated the estimate of SRFC Chinook escapement based upon new information. The revised projection lowers the 2008 SRFC abundance forecast to 54,570 SRFC adults. This new estimate assumes no further fishing in 2008 and is much lower than previous estimates.

The NMFS has determined that poor ocean conditions are a major factor of the low 2008 SRFC abundance. The NMFS also expects these poor conditions to continue affecting subsequent years' SRFC escapements in the near future. In addition, the 2008 SRFC **spawner escapement in 2008** is expected to be well below the lower boundary of the FMP conservation goal of 122,000 to 180,000 SRFC **adults**.

With this new information, the PFMC voted to recommend closure of all ocean salmon fisheries until the final 2008 federal regulations are enacted on May 1, 2008 to **provide** maximum protection for SRFC. This early season closure is a separate Commission emergency action **which went into effect April 4, 2008**.

On March 14, 2008, the PFMC developed three 2008 season structures for public review to severely reduce or eliminate fishery impacts on SRFC. The PFMC options allow for a very limited 2008 season, a 2008 season with no fishing after March 31, 2008 with **normal season opening dates in 2009**, and a season with no fishing after March 31, 2008 and no 2009 opening dates. The final PFMC regulation recommendations **were made on April 10, 2008** in Seattle, Washington.

Under all three options, the reference to Section 1.74 in subsection 27.80(a)(1) is proposed to be removed as salmon report cards are no longer required in ocean waters north of Horse Mountain and additional minor changes are proposed for regulation clarity. The specific differences from current regulations are discussed in the following paragraphs.

Option I

Seasons: For north of Horse Mountain and Humboldt Bay (Klamath Management Zone), the season is open May 24 through May 26, 2008, July 4 through July 6, 2008, and August 28 through August 31, 2008 (113 fewer days than in 2007). The area between Horse Mountain and Point Arena (Fort Bragg) is open February 16 to **April 4, 2008**, May 24 through May 26, 2008, July 4 through July 6, 2008, and August 28 through August 31, 2008 and will open in 2009 on February 14, 2009 (**209** fewer days than in 2007). The area between Point Arena and Pigeon Point (**San Francisco**) is open **May 24 through May 26, 2008, July 4 through July 6, 2008, and August 28 through August 31, 2008** and will open in 2009 on April 4, 2009 (209 fewer days than in 2007). The area south of Pigeon Point (Monterey and Moss Landing) is open May 18 through May 26, 2008 and will open in 2009 on April 4, 2009 (175 fewer days than in 2007).

Option II

Seasons: For north of Horse Mountain and Humboldt Bay (Klamath Management Zone), the season will be closed for all of 2008 (123 fewer days than in 2007). The area between Horse Mountain and Point Arena (Fort Bragg) is open February 16 to **April 4, 2008** and will open in 2009 on February 14, 2009 (**219** fewer days than in 2007). The area between Point Arena and Pigeon Point (**San Francisco**) is closed for all of 2008 and will open in 2009 on April 4, 2009 (219 fewer days than in 2007). The area south of Pigeon Point (Monterey and Moss Landing) is closed for all of 2008 and will open in 2009 on April 4, 2009 (184 fewer days than in 2007).

Option III

This option is the same as Option II except there are no 2009 early season openers proposed. Any 2009 openers will be decided in April 2009 by the PFMC and Commission.

The Pacific Fishery Management Council (PFMC) adopted Option III from the Amended Initial Statement of Reasons to amend Section 27.80, Title 14, California Code of Regulations on April 10, 2008.

The Fish and Game Commission adopted Option III for the state regulations at its April 15, 2008 meeting.